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## UNITED STATES DISTRICT COURT DISTRICT OF UTAH, CENTRAL DIVISION

HONORABLE CLAIR M. POULSON, in his official capacity as Judge of the Duchesne County Justice Court, and DEREK DALTON,

Plaintiffs,

v.

UTE INDIAN TRIBE OF THE UINTAH and OURAY RESERVATION; et. al.,

Defendants.

: PLAINTIFFS' RESPONSE TO
: "DEFENDANT GARDNER MOTION
: FOR TEMPORARY RESTRAINING
: ORDER AND ORDER TO SHOW
: CAUSE IN OPPOSITION TO
: PLAINTIFFS"

Civil No. 2:12-cv-00497-BSJ

Judge: Bruce S. Jenkins Magistrate Judge: Evelyn J. Furse Plaintiffs Honourable Clair M. Poulsen and Derek Dalton, by and through counsel, hereby respond to Defendant Edson Gardner's "Motion for Temporary Restraining Order and Order to Show Cause in Opposition to Plaintiffs", which was filed with the Court on September 19, 2012. (Doc. 96 and Doc. 97).

Although Defendant Gardner's brief is difficult to understand, it appears that his most recent filings are in fact reply memorandums in support of his original Motion for Preliminary Injunction and Temporary Restraining Order, filed on September 5, 2012. (Doc. 66). Plaintiffs responded to this *Motion* in a *Memorandum* opposing the *Motion for Preliminary Injunction and Temporary Restraining Order*. (Doc. 84). In fact, Defendant Gardner states that his current filing is "as opposition to Plaintiffs' Memorandum dated September 17, 2012." (Doc. 96 p. 2). Consequently, it appears that the recent filings are actually Defendant Gardner's reply memorandums.

However, in the event that Defendant Gardner has brought a new Motion for Temporary Restraining Order and/or Order to Show Cause, Plaintiffs oppose such motions and incorporate by reference their September 17, 2012 *Memorandum in Opposition to Defendant Gardner's Motion for Temporary Restraining Order*.

(Doc. 84). The legal and factual issues and claims are the same in the two

Motions, and Gardner has not met the stringent standard required for an order of injunctive relief. As such, Gardner's requests for injunctive relief should be denied.

DATED this 5th day of October, 2012.

SUITTER AXLAND, PLLC

s/ Noah M. Hoagland
Jesse C. Trentadue
Carl F. Huefner
Noah M. Hoagland
Britton R. Butterfield

/s/ Marea Doherty
Marea A. Doherty
Deputy Duchesne County Attorney

Attorneys for Plaintiff

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## **CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of October, 2012, I electronically filed the foregoing document with the U.S. District Court for the District of Utah. Notice will automatically be electronically mailed to the following individual(s) who are registered with the U.S. District Court CM/ECF System:

J. Preston StieffJ. Preston Stieff Law Offices136 East South Temple, Suite 2400Salt Lake City, Utah 84111

Alvina L. Earnhart Fredericks Peebles & Morgan, LLP 1900 Plaza Drive Louisville, Colorado 80027

In addition, I hereby certify that I also caused a copy of the foregoing to be served upon the following, via U. S. mail, postage prepaid, on this 5th day of October, 2012:

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/s/ Noah M. Hoagland